Supreme Court, U.S.
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No. 89-1235

IN THE

# Supreme Court Of The United States

October Term 1989

DONALD B. AND CAMILIA S. LANDER,
*Petitioners*

vs.

THE STATE OF ALABAMA,
*Respondent*

## PETITIONERS' REPLY BRIEF TO RESPONDENT'S OPPOSITION TO PETITION

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## QUESTION FOR REVIEW

I. WHETHER THE PETITIONERS WERE DENIED EQUAL PROTECTION OF THE LAW DUE TO THE STATE OF ALABAMA'S FAILURE TO FOLLOW THEIR OWN STATE LAWS ON CONSTRUCTIVE POSSESSION OF CONTROLLED SUBSTANCES.

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## PETITIONERS' REPLY BRIEF TO RESPONDENT'S OPPOSITION TO PETITION

Petitioners[1] respectfully pray that a Writ of Certiorari issue to review the Judgment of the Alabama Supreme Court on December 1, 1989, denying review of the issues raised concerning their convictions in this case, previously affirmed with opinion by the Alabama Court of Criminal Appeals by Judgment of May 26, 1989.

[1]Petitioners' undersigned counsel respectfully submits that to the best of his knowledge the style of this case accurately reflects all parties having an interest in its outcome.

## OPINIONS BELOW

Petitioners timely appealed their judgments of convictions and sentences to the Alabama Court of Criminal Appeals. By Judgment of May 26, 1989, the Alabama Court of Criminal Appeals affirmed their convictions and sentences with an opinion. Petitioners timely filed an Application for Rehearing in the Alabama Court of Criminal Appeals. This Application for Rehearing was denied without opinion by the Alabama Court of Criminal Appeals on June 30, 1989.

Petitioners timely filed a Petition for Writ of Certiorari to review the Judgment of the Alabama Court of Criminal Appeals in the Alabama Supreme Court. The Alabama Supreme Court by order of December 1, 1989, denied the Writ.

These orders appear in full in the Appendix submitted with the Petitioners' Petition for Writ of Certiorari previously submitted to this Honorable Court.

## JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257(3). This Petition was timely filed within sixty days of the date of the Alabama Supreme Court's Judgment and Order of December 1, 1989.

## CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or inunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws.

## STATEMENT OF THE CASE

For purposes of this Reply Brief, the Petitioners adopt the Statement of the Case set forth in their Petition for Writ of Certiorari previously filed with this Honorable Court.

## REASONS FOR GRANTING THE WRIT

### I. Petitioners Were Denied Equal Protection Of The Law Due To The State Of Alabama's Failure To Follow Their Own State Law On Constructive Possession Of Controlled Substances.

For purposes of this Reply Brief, the Petitioners adopt their reasons for granting the Writ as laid out in their previously filed Petition for Writ of Certiorari to this Honorable Court.

## ARGUMENT

The Petitioners, Donald B. and Camilia S. Lander, feel that they must respond to the Respondent's Argument in Opposition to the Petition filed by the State of Alabama on the 12th of February, 1990. In their argument, the Respondents state, "The Alabama Supreme Court was given no opportunity to consider the equal protection claim which the Petitioners seek to raise here." (Page 12, Respondent's Brief in Opposition). The Alabama Supreme Court, however, was given ample opportunity to respond and consider the equal protection claim. These arguments were laid out by the Petitioners in their Petition for Writ of Certiorari filed with the Alabama Supreme Court on July 14, 1989. (A-2 through A-11, Appendix to Petition for Writ of Certiorari to the Alabama Supreme Court). The Petitioners further addressed these issues in the accompanying brief filed with the Petition for Writ of Certiorari filed with the Supreme Court of Alabama. The Respondents state on Page 12 of their Argument in Opposition to the Petition that "the Petitioners made no effort to comply with the requirements of Rule 39

A.R.A.P." This argument is clearly in error. The Petitioners followed every procedural requirement of the *Alabama Rules of Appellate Procedure*. The Petitioners timely filed an appeal to the Alabama Court of Criminal Appeals on January 3, 1989, pursuant to the *Alabama Rules of Appellate Procedure* 31. The Alabama Court of Criminal Appeals affirmed the trial court in a written opinion released on May 26, 1989. (Appendix A-12, Petition for Writ of Certiorari to the Alabama Supreme Court). The Petitioners timely filed an Application for Rehearing with the Alabama Court of Criminal Appeals pursuant to the *Alabama Rules of Appellate Procedure* 40. The Application for Rehearing was denied without opinion on June 30, 1989. (Appendix A-19, Petition for Writ of Certiorari to the Alabama Supreme Court). The Petitioners then timely filed a Petition for Writ of Certiorari to the Alabama Supreme Court pursuant to the *Alabama Rules of Appellate Procedure* 39, which was denied without opinion on December 1, 1989. (Appendix A-1, Petition for Writ of Certiorari to the Alabama Supreme Court). Rule 39(j) to the *Alabama Rules of Appellate Procedure* states: (j) *Rehearing* — no application for rehearing shall be received in the Supreme Court if the Petition for Writ of Certiorari is denied." Since the Landers' Petition for Writ of Certiorari was denied by the Alabama Supreme Court, the Petitioners timely filed a Petition for Writ of Certiorari to this Honorable Court, pursuant to the *United States Supreme Court Rule* 20.1 and 20.4. The Petitioners fail to see how the Respondent can make a claim that they have failed to comply with the requirements of Rule 39 of the *Alabama Rules of Appellant Procedure*. The Respondent's claim is therefore unmeritorious.

## CONCLUSION

For these reasons, both separately and severally, the Petitioners respectfully submited that their claim was properly before the Alabama Supreme Court, and is therefore properly before this Honorable Court. The Petitioners pray that a Writ of Certiorari issue to review the Judgment of the Alabama Supreme Court.

Respectfully sbumitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing Petitioners' Reply Brief to Respondent's Opposition to Petition on P. David Bjurbery, Assistant Attorney General, Alabama State House, 11 South Union Street, Montgomery, AL 36130, via U.S. Mail, postage prepaid and properly affixed this the _____ day of _____, 1990.

DAVID S. LUKER